Filed 1/8/19 In re L.P. CA1/2
Opinion following rehearing

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re L.P., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Appellant, v. LAMONT P., Defendant and Respondent.	A146119 (Contra Costa County Super. Ct. No. J1200947)
In re Malik L., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Appellant, v. MALIK L., Defendant and Respondent.	A146276 (Contra Costa County Super. Ct. No. J1400355)
In re C.E., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Appellant, v. C.E.,	A147701 (Contra Costa County Super. Ct. No. J13005078)

Defendant and Respondent.

Judge Thomas M. Maddock of the Contra Costa County Juvenile Court took the position that a person who was declared a ward based on conduct that was felonious when committed, which conduct could be reclassified as a misdemeanor in the wake of Proposition 47, was not entitled upon reclassification to have his collected DNA sample and genetic profile removed from the database maintained by the California Department of Justice. That decision was unanimously sustained by the California Supreme Court, which held that "Proposition 47 does not authorize that relief." (*In re C. B.* (2018) 6 Cal.5th 118, 122.) The court further held that retention of a ward's genetic information did not improperly infringe his non-constitutional privacy rights or deprive him of equal protection. (*Id*. at pp. 133-135.) Finally, disapproving *Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209, the court held that the enactment of Penal Code section 299 following passage of Proposition 47 (Stats. 2015, ch. 487 [A.B. 1492]) did not require a different result. (*In re C.B.*, at pp. 129-130.)

These three appeals are all from Judge Maddock making the same ruling with respect to three wards. We ordered the appeals stayed pending the Supreme Court's decision in *In re C.B.*, *supra*, 6 Cal.5th 118 On October 12, 2018, after that decision became final, we ordered the appeals consolidated for purposes of decision, and allowed the parties to file supplemental briefs "addressing the impact of *In re C.B.*"

An examination of the opening briefs shows that they all advance arguments that were conclusively rejected in *In re C.B.* None makes a contention that the Supreme Court did not cover. In these circumstances, and to these issues, our function would be ministerial. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

Justice Liu filed a concurring opinion in *In re C.B.* noting that neither of the appellant juveniles "pressed any claim that the state's retention of his DNA samples implicates a constitutionally protected privacy interest. [Citations.] Such a claim may give rise to a cause of action under the California right to privacy [citation] or require a more stringent equal protection analysis [citation] in a future case." (*In re C.B.*, *supra*, 6 Cal.5th at p. 135 (conc. opn. of Liu, J.).) Seizing upon this language, each appellant in

his supplemental brief claims such "constitutionally protected privacy interest," which must prevail because the state cannot offer a sufficient justification that will survive strict scrutiny analysis. We will not reach the merits of this claim.

Our order allowed the parties to file supplemental briefs for the sole purpose of addressing the Supreme Court decision. It did not authorize the introduction of a new substantive claim of error. In any event, the privacy claim is fact-driven and fact-dependent, and inhospitable to resolution of abstract arguments. (See *Sheehan v. San Francisco 49ers, Ltd*. (2009) 45 Cal.4th 992, 998 [privacy claim not resolvable on demurrer].) Appellants have not developed the record to decide the issue in the first instance.

The orders denying expungement are affirmed.

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Richman, J.

We concur:

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Kline, P.J.

_____
Miller, J.

A146119, A146276, A147701